

FRANK'S CASE MAY WAIT 18 MONTHS ON U. S. COURT

If He Fails to Reach Federal Tribunal Last Chance in Pardon Board

The Case of Leo M. Frank, whose last appeal has been refused by the Supreme Court of Georgia, will remain in the Courts for eighteen months more, or longer, if his Attorneys succeed in getting it before the Supreme Court of the United States. If they fail in this effort, it is expected that the last Chapter of the Mary Phagan Murder Case will be Written in February or March.

Attorneys Tye, Peebles, and Jordan, and others, who represent the condemned man in the motion to set aside the verdict, will ask the Supreme Court of Georgia, when the remittitur sustaining Judge Hill's decision on the motion has been handed down, to grant a Writ of Error, on which the motion may be appealed to the Supreme Court of the nation.

If the Supreme Court of Georgia refuses to grant the Writ of Error, then the Attorneys for Frank must appeal to the judge of the Supreme Court of the United States, who represents this District. This is Justice Joseph R. Lamar, a Georgian.

JUDGE LAMAR TO DECIDE.

If the Case reaches him in this way, Justice Lamar will be called upon to consider it like a Judge of the Superior Court considers sanctioning a Writ of Certiorari from the Recorder's Court of the City Criminal Court.

If, after reading the Writ, he decides it is sufficiently meritorious to Warrant a hearing by the Supreme Court of the United States, he will sign it. However, if he fails to sign it, the Case of Leo M. Frank has ended in the Courts, except for the fixing in the Superior Court of

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FRANK'S LAST APPEAL GOES TO WASHINGTON

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another and final date for the execution of the sentence.

If the Case goes to the Supreme Court through the certification of a Writ of error by the State Supreme Court or by the Sanction of the Writ by Justice Lamar, it means that final decision will not be made for probably two years from this date, as the Supreme Court of the United States seldom reaches an appeal in a Criminal Case before the expiration of eighteen months. If the Supreme Court of the State and Justice Lamar of the Federal Court both refuse to sign the Writ, then the end of the Case will come in February or March.

Under these circumstances, Frank's only remaining hope would lie in the Pardoning Board and Governor.

ATTORNEYS OPTIMISTIC.

Frank's Attorneys, however, are confident, it is said, that the State Supreme Court would certify to the Writ of Error and permit the Case to be appealed to the highest Court in the Nation. The grounds on which they will endeavor to take the Case to the United States Supreme Court will be the same as those on which the motion to set aside the verdict was made in the Georgia Court, namely, that Frank was not tried according to due process of law, granted him as a constitutional right, in that he was not present when the verdict of guilty was returned against him.

FISH ABSENT.

The decision of the Georgia Supreme Court rendered Saturday was written by Associate Justice Warner Hill and was concurred in by the entire Court with the Exception of Chief Justice Fish, who was not able to pass upon the Case on account of illness. Briefly summarized, the Court held that the points made by Frank in his motion to set aside could and should have been made in his preceding motion for a new trial. The Court declared that the defendants must of necessity have known of the point at the time of his petition for a new trial, and that Counsel knew it, as was shown by the fact that the motion for a new trial contained a reference to Frank's absence from the Court. The Court held on this point as follows:

"When convicted of crime makes a motion for new trial, it is his duty to include everything in it, which was appropriate to such a motion, and it was known to him at the time." The Court held that while the defendant has the undoubted right in this State to be present at every stage of his trial, he may waive his presence at the reception of the verdict if he so desires.

Continuing, the Court said:

'It would be trifling with the Court to allow one who has been convicted of crime, and who had made a motion for a new trial on over 100 grounds, including the Statement that his counsel had waived his presence at the reception of the verdict, and have the motion heard by both the Superior and Supreme Courts of the motion, to now come in and by way of a motion to

set aside the verdict, include matters which were, or ought to have been, included in the motion for a new trial.'”

A significant paragraph in the decision follows:

“We know of no provision in the constitution of the United States, or of this State, nor of any statute, which gives to an accused person a right to disregard the rules of procedure in a State, which afford him due process of law, and demand that he shall move in his own way and be granted absolute freedom because of an irregularity (if there is one) in receiving the verdict. If an accused person could make some of his points of attack on the verdict, and reserve other points known to him, which he could then have made, to be used as grounds for further attacks on the verdict, there would be practically no end to a Criminal Case.”
